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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,125	08/21/2006	Alistair James Carr	DAIRY88.016APC	8879
20995 7590 01/06/2010 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER WONG, LESLIE A				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
01/06/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary

Application No.

10/564,125

Applicant(s)

CARR ET AL.

Examiner

Leslie Wong

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 8-27, 32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-27, 32, and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-27, 32, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhaskar et al (US 2003/0096036), General Foods (EP 0435573), and Schreiber Foods (WO 82/01806) in view of Poarch (US 4202907).

Bhaskar et al disclose a process for preparing a concentrated milk protein ingredient comprising providing a solution having a kappa-casein containing milk protein which is a membrane filtration retentate; adjusting the divalent ion content of a said protein solution to a predetermined; adding a food grade milk clotting; deactivating or removing said enzyme; and concentrating said solution .

General Foods discloses a process for preparing a concentrated milk protein ingredient for cheese which comprises providing a solution having a kappa-casein containing milk protein which is a membrane filtration retentate; adjusting the divalent ion content of a said protein solution; adding a food grade milk clotting enzyme under reaction conditions appropriate to convert said kappa-casein to para kappa-casein while maintaining a solution; deactivating or removing said enzyme to terminate said conversion; and concentrating said solution (see entire document, especially column 7, lines 12-28, and Example I and II).

Schreiber Foods discloses a process for preparing a concentrated milk protein ingredient for cheese which comprises providing a solution having a kappa-casein

containing milk protein; adjusting the divalent ion content of a said protein solution; adding a food grade milk clotting enzyme under reaction conditions appropriate to convert said kappa-casein to para kappa-casein while maintaining a solution; deactivating or removing said enzyme to terminate said conversion; and concentrating said solution (see entire document, especially page 12, lines 1-26, page 26, lines 26-31, and page 27, lines 8-18).

The claims differ as the recitation that the cation exchange serves to replace calcium and magnesium with sodium or potassium.

Poarch discloses a process for preparing a concentrated milk protein ingredient which comprises the steps of providing a solution having a casein containing milk protein; adjusting the divalent ion content of a said protein using cation exchange as is claimed; adding a food grade milk clotting enzyme; deactivating or removing said enzyme to terminate said conversion; and concentrating said solution (see entire patent, especially methods 2-4, and claim 6).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the cation exchange as taught by Poarch in that of Bhaskar et al (US 2003/0096036), General Foods (EP 0435573), and Schreiber Foods (WO 82/01806) because the use of cation exchange to replace one ion with another in the milk protein art is conventional. Applicant is using known components and process steps to obtain no more than expected results.

Applicant's arguments with respect to claims 1-3, 8-27, 32, and 34 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (571)272-1411. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Wong/
Primary Examiner, Art Unit 1794

LAW
January 3, 2010